

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Report on Possible Misconduct Regarding Changes to the USPS to Influence the 2020 Election

Possible Violation of the Law

Is Postmaster General Lewis DeJoy violating the law by limiting the capacity of the United States Postal Service to process mail-in ballots during upcoming elections?

Introduction

Under the leadership of Postmaster General Lewis DeJoy, there have been a series of changes regarding the infrastructure, personnel, and equipment of the United States Postal Service (USPS). There is increasing concern expressed by experts and politicians, both Republicans¹ and Democrats,² that these changes are causing delays in mail delivery across the country. There have been reports verifying these claims, and there is evidence that under DeJoy's leadership mail-delivery delays have increased.³ These changes and delays occur in conjunction with statements from President Trump and other administration officials disparaging mail-in voting as unsecure and likely to result in high levels of election fraud.⁴

Because ballots received after a cutoff date are likely to be invalidated,⁵ voters might properly fill out and mail their ballots only to have their vote discarded because of late delivery. Considering increases in delays, there exists the significant possibility that many voters will have their ballots invalidated despite proper submission.

If Postmaster General DeJoy is intentionally creating changes to the USPS to cause delays, discourage mail-in voting, or invalidate legally cast ballots to affect the upcoming election, he is likely in violation 18 U.S.C. § 595.⁶

Facts

Louis DeJoy was appointed Postmaster General on May 6, 2020 by the USPS Board of Governors, a group of USPS officials appointed by President Trump.⁷ He was the first non-career USPS employee to assume the position in nearly two decades. DeJoy previously held leadership positions within several large companies.⁸

Almost immediately after his appointment, questions surfaced regarding Postmaster General DeJoy's ability to conduct his duties objectively. Numerous alleged conflicts of interest were identified by political opponents, including prolific fundraising for Republican politicians and

causes.⁹ DeJoy has made large political donations, including \$440,000 to the Trump Victory Fund and other Republican causes in 2016¹⁰ and donated at least \$157,000 to conservative causes since the beginning of 2020.¹¹ Prior to his appointment, DeJoy acted as lead fundraiser for the 2020 Republican National Convention.¹²

DeJoy's personal finances and business practices have also raised questions. He and his wife may have financial stakes as high as \$75,815,000 in USPS competitors, raising questions about his true motivation in managing USPS.¹³ Most recently, reports have emerged that while acting as CEO for New Breed Logistics, a North Carolina-based company, DeJoy pressured employees to donate to Republican fundraisers and then reimbursed their donations through bonus payments.¹⁴ If true, this is likely a violation of federal and state campaign finance laws.¹⁵ The House Oversight Committee announced on September 7 that it will be launching an investigation into Postmaster General DeJoy to investigate if he broke campaign finance laws and whether his strong denial of that accusation under oath was a lie made to Congress.¹⁶ These concerns led some members of the Democratic party to question if DeJoy is capable of fairly overseeing the USPS in the run up to the 2020 election, where an unprecedented amount of mail-in ballots are expected.

Postmaster General DeJoy's short tenure has observed massive changes at the USPS. Since assuming the position in June, DeJoy implemented changes resulting in the reassignment or dismissal of 23 top postal executives; the removal of hundreds of electronic mail-sorting machines; a freeze on manager hiring; and a freeze on overtime for USPS workers.¹⁷ Trucks have also been ordered to leave distribution centers on a strict schedule regardless of their capacity, leaving behind unloaded mail until the following day.¹⁸ The American Postal Workers Union has decried these changes as "measures that were designed to delay mail."¹⁹ Internal USPS documents indicate that workers saw unusual amounts of mail sitting on the floor²⁰ and there are multiple reports of mail trucks leaving distribution centers empty.²¹ Testifying before Congress, the Postmaster General stated that the changes were an attempt to fix a financially struggling USPS and there were "unintended consequences."²²

Facing backlash, Postmaster General DeJoy declared that some of the newly implemented changes would be postponed until after the November election is over.²³ He has said no additional mail-sorting machines would be removed and has ended the freeze on overtime work for USPS workers.²⁴ DeJoy did note, however, that dismantled machines will not be reinstalled before the election. While it is difficult to determine the effects of Postmaster General DeJoy's moves, it is clear changes were implemented swiftly after he assumed office. According to USPS documents, as many as 475 mail-sorting machines were scheduled for removal before August and an exact tally of decommissioned machines has not been disclosed.²⁵

To quell concerns regarding the capacity of the USPS to handle the anticipated influx of election-related mail, Postmaster General DeJoy and other USPS officials have repeatedly stated there is no need for alarm. Speaking before Congress, Postmaster General DeJoy stated "The Postal Service will deliver every ballot and process every ballot in time." He went on to say, "We will scour every plant each night leading up to Election Day."²⁶ It is unclear if the new

policy practices of leaving late-arriving mail on the loading bay floor will continue with mail-in ballots.

Despite strong claims of confidence, the USPS recently sent letters to 46 states telling them that their current voting rules would mean properly submitted mail-in ballots might not reach polling destinations in time to be counted.²⁷ States set local election laws and often designate cutoffs for when mailed ballots can be accepted.²⁸ According to the letters, USPS might not have enough time to deliver ballots, even if they are put into the mail within the timeframe allowed by state law, due to the new delays.²⁹ The USPS recommendation says ballots should be requested as 15 days ahead of the election and sent back to election officials at least 7 days before.³⁰ The alert comes after a record number of mail-in ballots from the recent primary elections were discarded for lateness and other reasons.³¹ Over 534,000 mail-in ballots were invalidated through a combination of voter error and late delivery in the primary alone, nearly two-thirds more than were discounted in the 2016 presidential race.³² The 2016 election was decided by less than 200,000 votes across several states.

There are indications that the USPS has experienced delays to delivery since DeJoy assumed control. Reports from multiple cities identify significant delays³³ in mail delivery services, and several members of Congress have spoken about constituent complaints.³⁴ A recent staff report from Senators Elizabeth Warren and Bob Casey examined USPS delivery from pharmaceutical companies and identified delays as well.³⁵ According to the report, pharmacies relying heavily upon the USPS have reported an 18-32% delay in the delivery times of medication compared to 2019 and the beginning of 2020.³⁶ Characterizing the impact, the report states, “In general, this meant that deliveries that would typically take 2-3 days were instead taking 3-4 days.” It notes, “Some delays appear to be even longer.”³⁷

DeJoy’s changes and the subsequent rise in delays have occurred as President Trump and members of his administration have attacked the integrity of widespread mail-in voting. The President has published numerous tweets denigrating the validity of mail-in voting, alleging that it will be rife with fraud.³⁸ In one such example, President Trump wrote “There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mailboxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed.”³⁹

In an August interview, President Trump stated, “[Democrats] want \$25 billion for the post office. Now, they need that money in order to have the post office work so it can take all of these millions and millions of ballots. Now, in the meantime, they aren't getting there. But if they don't get those two items, that means you can't have universal mail-in voting because they're not equipped to have it.”⁴⁰ The president’s words indicate a willingness to withhold funding in order to ensure the USPS lacks the capacity to handle mail-in voting.⁴¹ In another statement, the president said, “Now, they need that money in order to make the Post Office work, so it can take all of these millions and millions of ballots”. He added: “If we don’t make a deal, that means they don’t get the money. That means they can’t have universal mail-in voting, they just can’t have it.”⁴²

Analysis

Many legally cast, correctly filed ballots might be invalidated in the upcoming election because the USPS will not be able to deliver them in time. The impact of a several hour delay at the USPS might be enough to invalidate legal ballots, since many states have hourly cutoff times for accepting mail-in ballots.⁴³ A day-long delay of mail delivery on election day could similarly leave an untold number of ballots undelivered until after the cutoff date under state law. These ballots might be discarded if state election laws are not changed.⁴⁴ By the USPS's calculations, most mail-in ballots should take between 2-10 days to arrive at their destination.⁴⁵ While not a direct comparison, applying the 18-32% increase in delivery time identified in the recent Congressional report on mail delivery delays,⁴⁶ the USPS might require several additional days beyond its estimate for ballots to arrive.

The letters sent by the USPS to 46 states indicated concern that voters who requested or mailed ballots following state instructions might still be invalidated due to the USPS's inability to meet deadlines. However, these letters did not include reference to delays or the impact they might have on invalidating votes. While some states have acted, others are unwilling or unable to mitigate this risk.⁴⁷ Key battleground states, including Pennsylvania, Michigan, Wisconsin, Florida, Georgia and North Carolina were among the 46 states to receive the USPS warning.⁴⁸ Considering that key states might not be able to count ballots which were correctly submitted according to state guidelines, even slight delays in mail services could invalidate votes sent even in accordance with USPS recommendations.

In the 2016 general election, President Trump won the key battleground states of Michigan, Wisconsin and Pennsylvania by a combined total of 79,646 votes.⁴⁹ The 2020 primary election saw the invalidation of 68,312 mail-in ballots among those three states.⁵⁰ While there is debate over whether either political party benefits more or less from increased access to mail-in voting,⁵¹ there is evidence that far more Democrats plan to vote by mail in the 2020 election.⁵² Delays, and therefore invalidation, of even a small percentage of legal, properly cast ballots could have dramatic impacts on the outcome of the election—especially if they occur in several key states.

Based on the rise in delays and statements from USPS workers, it appears that the changes implemented by Postmaster General DeJoy have been a direct factor in the current difficulties and delays facing the USPS. Combined with his alleged misconduct for the benefit of Republican causes and the disparaging remarks from Republican officials regarding mail-in voting, further investigation into DeJoy's motivations for implementing the new USPS policies is warranted.

Legal Conclusion

Under 18 U.S.C.S. §595, any "person employed in any administrative position by the United States" who "uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President,

Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner” is guilty of a crime punishable by fine or imprisonment of up to a year.⁵³ If Postmaster General DeJoy implemented changes at the USPS with the intention of affecting the ability of voters to cast ballots in the Presidential election, it would likely be a violation of 18 U.S.C.S. §595.

Delays caused by the removal of mail sorting machines and policy changes at the USPS have the potential to cause the invalidation of many ballots. It is unclear if these changes will have an impact on the ability of the USPS to deliver mail-in ballots on time, but the delays currently experienced in different parts of the country raise significant concerns. More information is also necessary to determine if the changes at the USPS have occurred with the “purpose of interfering with, or affecting, the nomination or the election.”

Postmaster General DeJoy is currently being investigated by Congress for alleged criminal misconduct designed to benefit the Republican Party and President Donald Trump. Since his appointment to the position of Postmaster General, changes in the USPS have resulted in reports of delays to mail delivery. If the changes to the USPS have been implemented to influence the upcoming election, it is likely in violation of 18 U.S.C.S. §595.

¹ Letter from Senator Susan Collins to Postmaster General Lewis DeJoy (August 13, 2020), https://www.collins.senate.gov/sites/default/files/Letter%20to%20PMG%20DeJoy%20Mail%20Delays-page-001%20%282%29-converted.pdf?_ga=2.224647833.2095210631.1599834666-1983581769.1598454023.

² Kevin Breuninger, *Elizabeth Warren, Bernie Sanders and other top Democrats demand USPS board reverse chief's policy changes*, CNBC (August 17, 2020), <https://www.cnbc.com/2020/08/17/usps-senate-democrats-demand-reversal-of-new-postal-chiefs-policy-changes.html>.

³ Joel Shannon, Donovan Slack & Kevin McKoy, *Empty mailboxes, missed rent: US Postal Service's struggles have real-world impacts*, USA Today (September 9, 2020), <https://www.usatoday.com/story/news/nation/2020/08/20/usps-complaints-mail-delivery-predate-furor-over-cost-cutting/5606887002/>.

⁴ Ellie Kaufman, Marshall Cohen, Jason Hoffman & Nicky Robertson, *Trump says he opposes funding USPS because of mail-in voting*, CNN (August 13, 2020), <https://www.cnn.com/2020/08/13/politics/trump-usps-funding-comments-2020-election/index.html>.

⁵ See *Absentee Ballots Deadlines*, Vote.org, <https://www.vote.org/absentee-ballot-deadlines/> (absentee ballots and mail-in ballots are often used interchangeably and typically operate using the same statutory dates).

⁶ 18 U.S.C. § 595.

⁷ Brian Naylor, *New Postmaster General is top GOP Fundraiser*, NPR (May 7, 2020), <https://www.npr.org/2020/05/07/851976464/new-postmaster-general-is-top-gop-fundraiser>.

⁸ Tim Mak, Tom Dreisbach & Dina Temple-Raston, *Who is Louis DeJoy? U.S. Postmaster General in Spotlight Ahead of 2020 Election*, NPR (August 21, 2020), <https://www.npr.org/2020/08/21/904346060/postmaster-general-faces-intense-scrutiny-amid-allegations-of-political-motives>.

⁹ *Id.*

¹⁰ Brian Murphey, *Donald Trump to return to NC for first time as president*, News and Observer, (October 3, 2017), https://www.newsobserver.com/news/politics-government/state-politics/article176825156.html?_ga=2.11888436.142235415.1599489717-1983581769.1598454023.

¹¹ Jacob Bogage, *Under fire from Trump, Postal Service braces for arrival of new postmaster general allied with White House*, Washington Post, (May 7, 2020), https://www.washingtonpost.com/business/2020/05/07/postal-service-postmaster-dejoy-trump/?_ga=2.11888436.142235415.1599489717-1983581769.1598454023.

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- ¹² Daniel Finnegan, *Lead fundraiser for Charlotte RNC named postmaster general. He starts in June*, Charlotte Business Journal (May 7, 2020), <https://www.bizjournals.com/charlotte/news/2020/05/07/lead-fundraiser-for-charlotte-rnc-named-postmaster.html>.
- ¹³ Chelsey Cox, *Fact check: New postmaster general invested in Postal Service competitors*, USA Today (August 13, 2020), <https://www.usatoday.com/story/news/factcheck/2020/08/13/fact-check-postmaster-general-louis-dejoy-invested-competitors/555048002/>.
- ¹⁴ Aaron C. Davis, Amy Gardner & Jon Swaine, *Louis DeJoy's rise as GOP fundraiser was powered by contributions from company workers who were later reimbursed, former employees say*, Washington Post (September 6, 2020), https://www.washingtonpost.com/investigations/louis-dejoy-campaign-contributions/2020/09/06/1187bc2c-e3fe-11ea-8181-606e603bb1c4_story.html?hpid=hp_no-name_dejoy-1230p%3Ahomepage%2Fstory-ans.
- ¹⁵ See 52 U.S.C. §30122 (the repayment of requested donations likely fits the application of the statute).
- ¹⁶ Amy Gardner and Paul Kane, *House Oversight Committee will investigate Louis DeJoy following claims he pressured employees to make campaign donations*, Washington Post (September 8, 2020), https://www.washingtonpost.com/politics/louis-dejoy-house-investigation/2020/09/07/d13be1ae-f175-11ea-bc45-e5d48ab44b9f_story.html.
- ¹⁷ Jacob Bogage, Lisa Rein & Josh Dawsey, *Postmaster general eyes aggressive changes at Postal Service after election*, Washington Post (August 20, 2020), <https://www.washingtonpost.com/business/2020/08/20/us-postal-service-louis-dejoy/>.
- ¹⁸ Ben Hall, *Postal trucks sometimes travel across the country – with no mail- after USPS cuts*, News Channel 5 Nashville, (August 24, 2020), <https://www.newschannel5.com/news/newschannel-5-investigates/postal-trucks-sometimes-travel-across-country-with-no-mail-after-usps-cuts>.
- ¹⁹ Mark Dimondstein, *Statement by Mark Dimondstein President, American Postal Workers Union on Announcement by the Postmaster General Louis DeJoy That Recent Changes Slowing the Mail Will Be Temporarily Reversed*, American Postal Workers Union (August 18, 2020), <https://apwu.org/press-release/statement-announcement-postmaster-general-louis-dejoy-recent-changes-slowing-mail-will>.
- ²⁰ Jacob Bogage, *Postal Service memos detail 'difficult' changes, including slower mail delivery*, Washington Post (July 14, 2020), <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>.
- ²¹ Hall, *supra* note 18.
- ²² Alison Durkee, *Postmaster General Acknowledges 'Unintended Consequences' Of USPS Changes Causing Mail Delays*, Forbes (August 14, 2020), <https://www.forbes.com/sites/alisondurkee/2020/08/14/postmaster-general-louis-dejoy-acknowledges-unintended-consequences-of-usps-postal-service-changes-mail-delays/#547a25606052>.
- ²³ See Postmaster General Lewis DeJoy's Statement (August 18, 2020), <https://about.usps.com/newsroom/national-releases/2020/0818-postmaster-general-louis-dejoy-statement.htm>.
- ²⁴ *Id.*
- ²⁵ Paul P. Murphey and Curt Devine, *Internal USPS documents raise questions about effectiveness of sorting machines removal order*, CNN (August 16, 2020), <https://www.cnn.com/2020/08/16/politics/usps-documents-sorting-machine-removal-order/index.html>.
- ²⁶ Russel Berman, *The Question at the Heart of the Postal Service Crisis*, The Atlantic (August 21, 2020), <https://www.theatlantic.com/politics/archive/2020/08/postal-service-election-trump-dejoy/615562/>.
- ²⁷ *U.S. Postal Service letters to states*, Washington Post (August 17, 2020), https://www.washingtonpost.com/context/u-s-postal-service-letters-to-states/b50799f2-25ad-40ed-ba1e-9d648b1814ad/?itid=lk_inline_manual_7.
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ Pam Fessler and Elena Moore, *More Than 550,000 Primary Absentee Ballots Rejected In 2020, Far Outpacing 2016*, NPR (August 22, 2020), <https://www.npr.org/2020/08/22/904693468/more-than-550-000-primary-absentee-ballots-rejected-in-2020-far-outpacing-2016>.
- ³² *Id.*
- ³³ Shannon et. al., *supra* note 3.

³⁴ Melissa Quinn, Stefan Becket and Grace Segers, *House Democrats grill postmaster general over delays in mail delivery*, CBS News (August 24, 2020), <https://www.cbsnews.com/live-updates/watch-live-postmaster-general-louis-dejoy-testifies-before-house/>.

³⁵ See Staff Report Prepared for Senators U.S. Senator Elizabeth Warren and U.S. Senator Bob Casey entitled *Rapidly Increasing Postal Service Delivery Delays for Mail-Order Prescription Drugs Pose Health Risks for Millions of Americans* (September, 2020), <https://www.warren.senate.gov/imo/media/doc/Warren%20Casey%20Mail%20Order%20Drug%20Staff%20Report%20Final.pdf>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ President Donald Trump (@realDonaldTrump), Twitter (May 26, 2020, 8:17 AM), <https://twitter.com/realDonaldTrump/status/1265255835124539392>.

⁴⁰ Barbra Sprunt, *Trump Opposes Postal Service Funding But Says He'd Sign Bill Including It*, NPR (August 13, 2020), <https://www.npr.org/2020/08/13/902109991/trump-admits-to-opposing-funding-for-postal-service-to-block-more-voting-by-mail>.

⁴¹ *Id.*

⁴² Jacob Bogage, *Trump says Postal Service needs money for mail-in voting, but he'll keep blocking funding*, Washington Post (August 12, 2020), <https://www.washingtonpost.com/business/2020/08/12/postal-service-ballots-dejoy/>.

⁴³ *Supra*, note 5.

⁴⁴ *Supra*, note 27.

⁴⁵ *Id.*

⁴⁶ *Supra*, note 35.

⁴⁷ Katelyn Polantz, *Pennsylvania high court asked to provide 'extraordinary' help in vote-by-mail cases*, CNN (August 18, 2020), <https://www.cnn.com/2020/08/18/politics/pennsylvania-supreme-court-vote-by-mail/index.html>.

⁴⁸ *Supra*, note 27.

Phillip Bump, *Donald Trump will be president thanks to 80,000 people in three states*, Washington Post (December 1, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/12/01/donald-trump-will-be-president-thanks-to-80000-people-in-three-states/>.

⁵⁰ *Supra*, note 31.

⁵¹ Michael Wines, *Which Party Would Benefit Most From Voting by Mail? It's Complicated*, New York Times (May 25, 2020), <https://www.nytimes.com/2020/05/25/us/vote-by-mail-coronavirus.html>.

⁵² Joey Garrison, *Biden voters twice as likely than Trump supporters to vote by mail in November, survey finds*, USA Today (August 18, 2020), <https://www.usatoday.com/story/news/politics/elections/2020/08/18/election-2020-biden-voters-twice-likely-vote-mail-survey-finds/3394795001/>.

⁵³ 18 U.S.C.S. §595.